9-5-2012

In re Estate of Manes Respondent's Brief Dckt. 39911

RESPONDENT'S BRIEF

DOCKET No. 39911

IN THE SUPREME COURT OF THE STATE OF IDAHO

IN THE MATTER OF THE ESTATE OF ALMON D. MANES DECEASED.

Appealed from Case Number CV 2009-39340 of the District Court of the Second Judicial District for the State of Idaho, in and for Idaho County.

The Honorable Michael J. Griffin, District Judge, presiding.

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STATEMENT OF THE CASE

Almon Manes passed away on February 10, 2009. R 6. During his last days he relied upon Samson to help him with his estate. TR 165 ll 23 through 166 ll 5. Upon his passing, Miller, the personal representative, engaged Samson to supervise the estate. *Petitioner's Exhibit 1.* Shortly after Manes' death or while upon his deathbed, in February of 2009, Miller proposed compensating Samson with personalty from the estate. TR 183 ll 4-9. Samson rejected the February of 2009 offer stating that he would need money. *Id.* Miller responded by saying he would be "well-compensated." TR 128 ll 14-22, & 182 ll 17-20. Samson did not recollect an hourly rate of pay. TR 182 ll 22-25.

Samson began working for the estate in February of 2009 under an implied contract. TR 128 ll 12-22 & 183 ll 4-9. Samson had been working on the Estate for several months, when in May of 2009, Miller sent Samson a written proposal for his consideration. See *Petitioner's Exhibit 7.* Samson expressly rejected Miller's May of 2009 proposal, but continued to work for the estate under the terms of the February 2009 implied contract. TR 134 ll 20 through 135 ll 1-3 & 151 ll 4-11.

Further, Miller wrote to Samson often and on at least two occasions asked him to accept cash money in partial payment for his labor. *Petitioner's Exhibit 6 & 12.* Samson was terminated in September and in October he sent a written bill to Miller. *Petitioner's Exhibit 8 & 9A.* The bill was not paid, his claim thereon disallowed, and the matter was heard by Magistrate Jeff Payne who allowed the bulk of the claim. Miller filed a motion to reconsider, the motion was heard and denied by Judge Payne. Miller appealed to the District Court and the District Court affirmed the Magistrate's decision.

ISSUES ON APPEAL

1. Did the Magistrate court err when it determined that the parties did not have a May 2009 express contract based upon performance -- or rather -- did the Nagistrate err

in determining that negotiations in May of 2009 did not result in a modification of the February of 2009 implied-in-fact contract?

2. Did the Magistrate Court err by finding a February 2009 implied-in-fact contract existed between the parties?
3. Did the Magistrate Court err in granting quantum meruit relief when said theory was not argued by Samson?
4. Did the Magistrate Court err in awarding reasonable value of services damages and reasonable expenses damages?
5. Is Samson entitled to attorney fees and costs on appeal?

SUPREME COURT STANDARD OF REVIEW

> The Supreme Court reviews the trial court (magistrate) record to determine whether there is substantial and competent evidence to support the magistrate's findings of fact and whether the magistrate's conclusions of law follow from those findings. If those findings are so supported and the conclusions follow therefrom and if the district court affirmed the magistrate's decision, we affirm the district court's decision as a matter of procedure.

Losser v. Bradstreet, 145 Idaho 670 (2008).

DISTRICT COURT'S STANDARD OF REVIEW

> Imposition of an equitable remedy requires a balancing of the equities, which is inherently a factual determination; therefore, the district court's imposition of such a remedy should be reviewed for an abuse of discretion. A trial court does not abuse its discretion if it (1) correctly perceives the issue as discretionary, (2) acts within the bounds of discretion and applies the correct legal standards, and (3) reaches the decision through an exercise of reason. Review of a trial court's conclusions from a bench trial is limited to

> ascertaining whether the evidence supports the findings of fact, and whether the findings of fact support the conclusions of law. Since it is the province of the trial court to weigh conflicting evidence and testimony and to judge the credibility of the witnesses, this Court will liberally construe the trial court's findings of fact in favor of the judgment entered. This Court will not set aside a trial court's findings of fact unless the findings are clearly erroneous. If the trial court based its findings on substantial evidence, even if the evidence is conflicting, this Court will not overturn those findings on appeal. This Court will not substitute its view of the facts for that of the trial court. However, this Court exercises free review over matters of law.

Justad v. Ward, 147 Idaho 509 (2009) (internal citations omitted).

I. DID THE MAGISTRATE COURT ERR WHEN IT DETERMINED THAT THE PARTIES DID NOT HAVE A MAY 2009 EXPRESS CONTRACT BASED UPON PERFORMANCE -- OR RATHER -- DID THE MAGISTRATE ERR IN DETERMINING THAT NEGOTIATIONS IN MAY OF 2009 DID NOT RESULT IN A MODIFICATION OF THE FEBRUARY OF 2009 IMPLIED-IN-FACT CONTRACT?

Neither the Idaho Supreme Court nor the Court of Appeals considers assignments of error not supported by argument and authority in the opening brief. See *Hogg v. Wolske*, 142 Idaho 549, 559 (2006) (emphasis added). Here, Miller does not cite a single authority in support of her argument that an express contract is formed by performance -- or even part performance as the facts of this case might lend itself to. See *Appellant's Brief* at 3-5. The only authority that Miller cites in support of her issue is the rule that equity does not intervene when an express contract prescribes the right to compensation. See *Appellant's Brief* at 5. Said authority has absolutely nothing to do with the issue of whether or not performance forms a contract. Therefore, the issue should be dismissed.

SHOULD THE FOREGOING ARGUMENT FAIL, THEN IN THE ALTERNATIVE

Miller appears to argue that Samson's performance of some of the provisions of Miller's May of 2009 written proposal; and-or that statements made by Samson's attorney regarding the use of said proposal to examine Samson at trial; operate together to form an express contract. However, as stated above, Miller provides no authority on which to analyze her contention.

The Idaho Supreme Court recognizes three types of contractual relationships: (1) an express contract wherein the parties expressly agree regarding a transaction; (2) an implied-in-fact contract wherein there is no express agreement, but the conduct of the parties implies an agreement from which an obligation in contract exists; and (3) an implied-in-law contract, or quasi contract. *Fox v. Mountain West Electric. Inc.*, 137 Idaho 703, 707-708 (2002).

Here, the parties never agreed to Miller's May of 2009 written proposal. TR 134 ll 20 through 135 ll 1-3, & 151 ll 4-11. Miller's May of 2009 written proposal was never signed by Samson. *Id.* & see page 8 of *Petitioner's Exhibit 7.* There was no testimony or evidence that disputes Samson's testimony or the fact that Samson's signature does not appear on Miller's May of 2009 written proposal. Samson expressly rejected the written proposal. TR 151 ll 4-11. Thus, it is indisputable that there was no express contract.

Formation of an express contract based upon part performance is only applicable as an exception to the statute of frauds. See *Ogden v. Griffith*, 149 Idaho 489, 493 (2010). Part performance does not substitute for an incomplete agreement, but instead operates to allow an agreement to be enforced when it does not comply with the statute of frauds. *Bauchman-Kingston Partnership, LP v. Haroldsen*, 149 Idaho 87, 93 (2008). Equitable estoppel generally, and the doctrine of part performance specifically, assume the existence of a complete agreement. *Chapin v. Linden*, 144 Idaho 393, 396 (2007).

Here, Miller contends that Millers' May of 2009 written proposal, which Samson

rejected, should be enforced against Samson because he had performed some of the work outlined in said proposal. (See the transcript excerpts immediately following this paragraph for Samson's verbal rejection.) However, there was no testimony or evidence offered that Samson accepted the proposal, Miller simply argues the point without any evidence beyond Samson testifying that he did some of the work that was listed in the proposed agreement. Moreover, the evidence adduced at trial was that Samson rejected Miller's May of 2009 written proposal by refusing to sign it and by telling Miller that he did not like the proposal:

> Clark: Okay. Did you sign this agreement? [referring to Miller's May of 2009 written proposal]
>
> Samson: No, I did not.
>
> Clark: Why didn't you sign this agreement?
>
> Samson: For one thing it was like a dictator telling me how much I had to get done, when I can't do it that fast. When you're going through trying to save stuff that belongs to Virginia, and I just couldn't do it. And she wanted me to throw a lot of it away and save all the antiques for her, and I just couldn't do it.

TR 134 ll 20 through 135 ll 1-3.

> Clark: Did you ever receive monetary reimbursement for your services?
>
> Samson: Nope.
>
> Clark: Is that one of the reasons that you didn't agree to this? [again referring to Miller's May of 2009 written proposal]
>
> Samson: Yes. And I disagreed to it, and I told her I did not like the way she wrote it up. She said she was going to write another one.

TR 151 ll 4-11.

A rejection of an offer to contract cannot be construed in any way, shape, or form as a "complete agreement" as the part performance exception rule requires. Furthermore, here, there was no statute of frauds defense presented by either party or the Magistrate. Nor was there any agreement that would have been an enforceable contract, but for the operation of the statute of frauds. Therefore, partial performance doctrine does not apply to the present case whatsoever.

Miller argues a contract was formed in May of 2009 -- an argument that the Magistrate considered then specifically and soundly rejected. R 72. There was no need for the Magistrate to specifically address "part performance" exception rule to the statute of frauds because the statute of frauds was never in play and Miller's May of 2009 written proposal was rejected by Samson and so incurable by the part performance exception as a matter of law.

It is true that during the trial, Samson's attorney examined Samson as to the terms of Miller's May of 2009 written proposal. Specifically Samson's attorney's inquiries were more or less focused on the work Samson had been performing for the estate prior to receiving Miller's May of 2009 written proposal. See TR 149 ll 19 through 150 ll 1-20. Miller's attorney objected since Samson was arguing that the contract was not enforceable. *Id.* Samson's attorney simply noted that using Miller's May of 2009 written proposal to elicit Samson's testimony was relevant because there may be a question of partial performance. *Id.* Miller's attorney now appears to argue that Samson's attorney's comment regarding relevancy somehow estopped the Magistrate from making his finding that there was no new implied contract formed in May of 2009.

The facts of this case are remarkably similar to *Treasure Valley.* In *Treasure Valley,* a healthcare facility attempted to circumvent the statute of frauds on an employment contract that could not be completed in one year. *Id.* at 487-488. The healthcare facility

wanted to enforce a non-compete clause. *Id.* The healthcare facility presented at least two different agreements and the doctor did not sign either one because she wanted some revisions. *Id.* Nevertheless, the doctor began working for the healthcare facility and then later, it seems, engaged in activity in contradiction to the proposed non-compete clause. *Id.* The Court of Appeals ultimately held:

> It was within Treasure Valley's power to insist upon execution of the contract before Dr. Woods began work or thereafter. Having failed to do so, Treasure Valley is now prevented by the statute of frauds from gaining judicial enforcement of the contractual terms that it requested but did not secure.

Treasure Valley at 492. At all stages of that case, the doctor consistently denied agreeing to all of the provisions in the draft contracts presented by the healthcare facility. *Treasure Valley* at 491. Also, she specifically denied agreeing to the covenant not to compete. *Id.* *Treasure Valley* stands for the proposition that an enforceable contract is not formed by the acknowledgment and-or performance of one party to some terms in a proposed contract, where the proposal was rejected and-or specific provisions of the proposal were rejected.

In this case, Samson has consistently denied agreeing to Miller's May of 2009 written proposal in whole, and specifically denied agreeing to work for personalty only. TR TR 134 ll 20 through 135 ll 1-3 & TR 151 ll 4-11. Like *Treasure Valley*, Samson did not sign Miller's May of 2009 written proposal. *Id.* & *Petitioner's Exhibit 7.* He did not agree to the term of no monetary compensation that Miller now seeks to have the Court impose upon him -- in fact -- he insisted on money. TR 183 ll 4-9. In reviewing the breadth of his testimony, it seems fair to say that this was one of the terms that Samson most objected to, and yet Miller now asserts that the very term rejected should be the imposed term.

Samson did a lot of the work listed in Miller's May of 2009 written proposal, but he

had already begun the work beginning in February of 2009.[1] Petitoner's Exhibit 1 & 2, & TR 157 ll 5 through 168 ll 9. His performance was coupled with the parties February of 2009 agreement that resulted in an implied contract. *Id.* Samson did not perform based upon the proposed and rejected writing of May of 2009 -- no fair analysis of the evidence and the Magistrate's findings could support such an outlandish and meritless claim. Like *Treasure Valley*, Samson worked without a signed written agreement but performed many of the duties recited in Miller's May of 2009 written proposal. Like *Treasure Valley*, Samson disputes agreeing to a writing he did not sign. Like *Treasure Valley*, Samson objected at all relevant times to a provision that Miller is now trying to have the Court impose upon him. Like *Treasure Valley*, it was within Miller's power to insist upon execution of the contract before Samson began work or at any time thereafter. Having failed to do so, Miller is now prevented from gaining judicial enforcement of the contractual terms that she requested but did not secure.

Additionally, equitable estoppel cannot help Miller in her attempt to take undue advantage of Samson, because she has neither appealed for, nor has the first element of equitable estoppel been shown, to wit: Conduct on the part of Samson which amounts to a false representation or concealment of material facts, or, at least, which was calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert. See *Treasure Valley* at 490. Samson testified that he told Miller that he "had to have money" not personalty. TR 183 ll 4-9. There has been no evidence, clear and convincing, or otherwise presented that showed Samson to have made either: (1) a false representation that he did not want to have money; (2) concealment that he did not want to have money; or (3) conduct which is calculated to

1 Similarly in *Treasure Valley*, although written contracts were presented to the doctor after she began working for the healthcare facility, her performance did not invoke the partial performance doctrine. The doctor worked from May of 1995 through February of 1997 without a written contract. *Id.* at 488.

convey the impression he did not want to have money.

The Magistrate did not abuse his discretion because he correctly perceived the issue as discretionary, he acted within the bounds of discretion and applied the correct legal standards, he reached the decision through an exercise of reason, and based his findings on substantial evidence. Specifically, the Magistrate's finding that there was no express or implied contract formed as a result of Miller's May of 2009 written proposal because Samson rejected it; therefore, the Magistrate's findings are supported by substantial and competent evidence. See R 71 & TR 134 ll 20-25 & 135 ll 1-3. Namely, that the contract was never signed. *Id.* & see page 8 of *Petitioner's Exhibit 7.* Also, that Samson flatly rejected the contract directly by telling Ms. Miller that he did not like the way she wrote it up and she responded by offering to draft another contract that might be acceptable. See TR 151 ll 4-11.

II. DID THE MAGISTRATE COURT ERR BY FINDING A FEBRUARY OF 2009 IMPLIED-IN-FACT CONTRACT EXISTED BETWEEN THE PARTIES?

The Idaho Supreme Court has recognized three types of contractual relationships: First is the express contract wherein the parties expressly agree regarding a transaction. *Fox v. Mountain West Electric*, 137 Idaho 703, 707-708 (2002) (internal citations omitted). Secondly, there is the implied-in-fact contract wherein there is no express agreement but the conduct of the parties implies an agreement from which an obligation in contract exists. *Id.* The third category is called an implied- in-law contract, or quasi contract. *Id.* However, a contract implied in law is not a contract at all, but an obligation imposed by law for the purpose of bringing about justice and equity without reference to the intent or the agreement of the parties and, in some cases, in spite of an agreement between the parties. *Id.* It is a non-contractual obligation that is to be treated procedurally as if it were a

contract, and is often referred to as quasi contract, unjust enrichment, implied in law contract or restitution. *Id.*

An implied-in-fact contract is defined as one where the terms and existence of the contract are manifested by the conduct of the parties with the request of one party and the performance by the other often being inferred from the circumstances attending the performance. *Id.* The implied-in-fact contract is grounded in the parties' agreement and tacit understanding. *Id.* The general rule is that where the conduct of the parties allows the dual inferences that one performed at the other's request and that the requesting party promised payment, then the court may find a contract implied-in-fact. *Id.*

Fox cites *Clements*. The *Clements* case involved an attorney (Clements) against his former client (Jungert) for the reasonable value of attorney fees and expenses. Id. at 147. Clements represented Jungert in a case where Jungert was judged to have committed the tortious act of firing a rifle into the tires of a truck belonging to the Mendenhalls. *Id.* at 147 and 149. The Jungerts were dissatisfied with the outcome of the case and opted to not pay Clement's his attorney fees, stating that "as far as I am concerned, you handled this matter as the attorney for the insurance company." *Clements* at 149. Essentially, the trial court found that even though no express contract was made between Clements and Jungert, that Jungert was sufficiently put on notice that the insurance company was not going to pay for Jungert's defense. Thus, Clements was awarded his fees. *Clements* at 150. The trial court's judgment was affirmed. There was no discussion on whether or not Clements attorney rates had been disclosed prior to Clements services being terminated. See *Clements* at 149.

Jungert appealed and relied upon *Felton.* The Supreme Court distinguished *Clements* from *Felton*, in that in *Felton*, the client did not request the services, but rather had refused the attorney's services whereas in *Clements*, the services had been requested. *Clements* at 153.

Here, in comparison to *Clements*, and *Felton*, and with respect to the February of 2009 implied contract, Miller requested Samson's services, and she promised to pay him, and Samson performed said services. See *Petitioner's Exhibit 1* showing that Miller had requested and obtained Samson's services as of 2/13/2009. See *Petitioner's Exhibit 6* showing Miller on 3/7/2009 thanking Samson for helping the estate and taking care of the animals; acknowledging the inventory was a huge task; and indicating that Miller had enclosed a check to Samson for his "labor." All of these documents were admitted as having been written by Miller to Samson. See TR 170 ll 20 through 172 ll 4.

Also Samson testified that Miller approached him at the hospital when Mr. Manes was on his deathbed.

> Clark: How do you know Jessie Miller?
>
> Samson: I've met her a few times when she's come up. Over a period of all these years I've met her maybe twice at Almon's house and maybe once in the Clearwater Baptist Church. And I never met her again or seen her again until in the hospital when Almon was in the hospital.
>
> Clark: Okay. Can you tell me about the conversations you had with Ms. Miller at the hospital.
>
> Samson: Well, before Almon passed away she was trying to get me to help her, and I didn't want no part of it. And I told her I didn't want no part of it. And she kept hounding me and hounding me, and on the third or fourth day she said I really need your help because I can't trust anybody. And I said, okay. She said, I will be well compensated. She kept telling me I would be well compensated over this period of four days in the hospital.

TR 128 ll 5-22.

> Clark: Did she ever tell you how much how she was going to compensate you?

> Samson: Well, they -- after he passed away, it must have been about a month, her and Randy came out. They came out I don't know how many times. But they said they wanted to get me a cell phone, and they were going to put me on the payroll. They wanted to get me some health insurance because they got to insure the property. And I'm just -- it was just amazing what I was hearing.
>
> Clark: Did you get any of those?
>
> Samson: Nope.

TR 176 ll 15 through 177 ll 1 (emphasis added).

> Clark: Mr. Mitchell spent some time trying to get or trying to get at whether you were forced or you volunteered or voluntarily went out to the Almon Manes' Estate. So my question is: Did you ever come to the decision that you were going to work on the Almon Manes' Estate without compensation? Was it your intent that you would go out there and not get compensated?
>
> Samson: No. My intent was to be well compensated.

TR 189 ll 6-13.

The Magistrate did not abuse his discretion because he correctly perceived the issue as discretionary, he acted within the bounds of discretion and applied the correct legal standards, and reached the decision through an exercise of reason, and based his findings on substantial evidence. Specifically, here there is substantial and competent evidence, by Miller's own hand and words, that Mr. Samson was working for the estate at Miller's request, Miller offered to pay Samson, and Samson performed the work requested. See TR 135 ll 23 through 149 ll 14 for the core of Samson's testimony about the work he performed. However, because the parties never agreed to a specific rate of pay, no express contract was formed and no remedy at law could be had. See TR 182 ll 22-24. Since, the Magistrate had concluded that there was no express contract formed, the equitable remedy

of an implied-in-fact contract could be resorted to by the Magistrate.

THE MEETING OF THE MINDS ISSUE

Formation of a valid contract requires that there be a meeting of the minds as evidenced by a manifestation of a mutual intent to contract. *Thomas v. Thomas*, 150 Idaho 636, 645 (2011). An implied-in-fact contract is grounded in the parties' agreement and tacit understanding that there is a contract. *Gray* at 387. The general rule is that where the conduct of the parties allows the dual inferences that one performed at the other's requests and the requesting party promised payment, the court may find a contract implied-in-fact. *Id.*

Miller continues to argue that the Magistrate and the District Court Judge found there was no meeting of the minds as to the method or specific rate of compensation on which to form an express contract, that there was no meeting of the minds upon which to form an implied-in-fact contract. See *Appellant's Brief* at 6. This is not the correct legal standard, the correct legal standard is that a meeting of the minds is evidenced by the objective manifestation of a mutual intent to contract. Moreover, Miller's argument is nonsensical because if there is a complete and total meeting of the minds that does not implicate the statute of frauds, it would always result in an express contract. Clearly, Idaho Law allows the formation of an implied contract on a meeting of the minds where there is the objective intent to contract. See *Clements*.

Here, the Magistrate found that in February of 2009:

> Mr. Samson and Ms. Miller had in implied-in-fact contract ground on the parties' agreement and tacit understanding that there was a contract. The parties conduct, as previously set forth herein, allows for the dual inference that Mr. Samson provided work for the estate at Ms. Miiler's request and that Ms. Miller promised payment to Mr. Samson for his work.

R 75. Said finding, impliedly finds and incorporates therein an objective mutual intent to contract in February of 2009. Therefore, the Magistrate did not abuse his discretion because he correctly perceived the issue as discretionary, he acted within the bounds of discretion and applied the correct legal standards, reached the decision through an exercise of reason, and he based his findings on substantial evidence.

SHOULD THE FOREGOING ARGUMENT FAIL,THEN IN THE ALTERNATIVE

Where the lower court reaches the correct result by an erroneous theory, the Idaho Supreme Court and the Court of Appeals will affirm the order on the correct theory. See *Nampa & Meridian Irr. Dist. v. Mussell*, 139 Idaho 28, 33 (2003). In this case, Samson argued for unjust enrichment. The Magistrate found that all the elements of an unjust enrichment claim had been proved but denied Samson's unjust enrichment claim solely on the basis that "the evidence does not establish the value of the benefit the estate received that would be unjust for the estate to retain without payment therefor to Mr. Samson." See R 72-74.

From the bottom of R 72 to the bottom of R 73, the Magistrate, in his findings, correctly identified the following rules of law:

1. A prima facie case for unjust enrichment is: (1) a benefit conferred upon the defendant by the plaintiff; (2) appreciation by the defendant of such benefit; and (3) acceptance of the benefit under circumstances that would be inequitable for the defendant to retain the benefit without payment to the plaintiff of the value thereof. *Independent School Dist. of Boise City v. Harris Family Ltd. Partnership*, 150 Idaho 583, 590 (2011).

2. Unjust enrichment, or restitution, is the measure of recovery under a contract implied-in-law. *Gray* at 388. As previously addressed herein, a contract implied-in-law is not a contract at all, but is an obligation imposed by law for the purpose of bringing about justice and equity without reference to the intent or the agreement of the parties *Fox* at 708. It is a non-contractual obligation that is to be treated procedurally as if it were a

contract. *Id.*

3. The measure of recovery on an unjust enrichment claim is not the actual amount of the enrichment, but the amount of enrichment that would be unjust for one party to retain without payment therefore. *Gray* at 388-89. The plaintiff has the burden of proving the defendant received a benefit and the amount of the benefit the defendant unjustly retained. *Gray* at 389. The value of services rendered can be used as evidence of the value of the benefit bestowed under the theory of unjust enrichment. *Id.* However, the measure of damages is not necessarily the value of the money, labor and materials provided by the plaintiff to the defendant, but the amount of benefit the defendant received that would be unjust for the defendant to retain. *Independent* at 589.

The Magistrate identified the correct legal standard insofar as he went, but he overlooked an important commentary regarding the distinction between the quantum meruit measure of damages and the unjust enrichment measure of damages. Although Idaho law appears to measure recovery under quantum meruit by the fair market value of the goods or services received and used by the defendant, while under unjust enrichment the focus is on the value of the benefit which it would be unjust for the defendant to retain, Idaho has also recognized that generally there is no difference between the two. *Interform Co. v. Mitchell*, 575 F.2d 1270, 1278 (9th Cir. 1978). Further, footnote 4 of said opinion goes on to explain:

> A distinction appears in Idaho law between a recovery in quantum meruit, where the parties have attempted to contract but the contract is void or unenforceable, and a recovery in unjust enrichment where there was never any attempt to arrive at a contract. Compare Dale's Service Station, Inc. v. Jones, supra at 1105-06 and Weber v. Eastern Idaho Packing Co., 94 Idaho 694, 496 P.2d 693, 696 with Hixon v. Allphin, 76 Idaho 327, 281 P.2d 1042 (1955) and Continental Forest Products, Inc., 95 Idaho 739,

> 518 P.2d 1201, 1205-06 (1974). In both situations, however, the recovery granted is not based upon a contract and in both the underlying standard for the recovery is the net benefit conferred upon the defendant. As suggested in the text, although the formula by which such benefits are measured may vary, in most commercial contexts the recovery will be identical under either the quantum meruit or unjust enrichment line of cases, Continental Forest Products, Inc. v. Chandler Supply Co., supra at 1206."

The Ninth Circuit's insight is informative regarding the language of Idaho's relevant legal standard set forth in *Gray* and many other cases. The language in the measure of unjust enrichment damages rules specifically contemplates, allows, and directs that the measure of damages in unjust enrichment most often begins with the the value of the money, labor and materials provided by the plaintiff to the defendant, even though the amount that would be unjust for the defendant to retain might be less.

Here, Samson proved the reasonable value of services rendered and the Magistrate should have considered it as evidence of the amount of the enrichment under the theory of unjust enrichment. R 75-77. And although, the measure of damages is not necessarily the value of the money, labor and materials provided by the plaintiff to the defendant, it very well can be, and in this case it must be because there is no contradictory evidence showing Miller was entitled to a different calculation or offset. Miller did not present any evidence, or even argument, that contradicted Samson's equitable case -- that it was unjust for Miller to retain the fair and reasonable value of his services and the expenses he incurred on behalf of the estate. When the Magistrate found Samson proved the reasonable value of his services and reasonable value of his expenses, and Miller failed to present evidence that a different calculation or offset was appropriate in the case, Samson proved that dollar-for-dollar Miller was enriched thereby and dollar-for-dollar that it would be unjust for Miller to retain her enrichment thereupon.

As stated above, it was Samson's burden to prove his measure of damages under the unjust enrichment measure (unjust retention). Likewise, it was Samson's burden to prove his measure of damages under quantum meruit (reasonable values). In this case, there is no difference in the result from the two measures of damages.

Here, it was found that the reasonable amount of the value of money, services, and materials that Samson provided to Milller was $30,296.47 plus pre-judgment interest. R 81-82. The reasonable value of services rendered equals the amount of the enrichment. It follows therefrom, that the amount of the enrichment less any equitable offsets equals the amount that would be unjust for Miller to retain. It was not Samson's duty to prove any offsets, or alternate calculations, that Miller might be entitled to.

Therefore, the Magistrate erred because he incorrectly applied the legal standard. However, to the penny, the Magistrate reached the correct result on the alternate theory of quantum meruit and therefore the Court should affirm the Order Granting Petition for Allowance of Claim on the correct theory of unjust enrichment.

III. DID THE MAGISTRATE COURT ERR IN GRANTING QUANTUM MERUIT RELIEF WHEN SAID THEORY WAS NOT ARGUED BY SAMSON?

Neither the Idaho Supreme Court nor the Court of Appeals considers assignments of error not supported by argument and authority in the opening brief. See *Hogg v. Wolske*, 142 Idaho 549, 559 (2006) (emphasis added). Here, Miller cites no authority whatsoever in support of her assignment of error. See *Appellant's Brief* at 7-8. Therefore, the issue should be dismissed.

SHOULD THE ABOVE ARGUMENT FAIL, THEN IN THE ALTERNATIVE

The doctrine of quantum meruit is a remedy for an implied-in-fact contract and permits a party to recover the reasonable value of services rendered or material provided

on the basis of an implied promise to pay. *Gray v. Tri-Way Const. Services, Inc.*, 147 Idaho 378, 387 (2009).

Unless displaced by the particular provisions of this code, the principles of law and equity supplement Idaho's probate statutes. Idaho Code § 15-1-103. Equity not only permits courts to analyze all the relevant facts, it also permits courts to consider any equitable remedy. *Climax* at 797. Idaho's probate law operates in both law and equity. See Idaho Code § 15-1-103. However, an equitable remedy is not available, if there is a remedy in law. *Farmers Nat. Bank v. Wickham Pipeline*, 114 Idaho 565 (1988).

Executors who fail to request clarification on a claim waive the right to challenge the formal sufficiency of a claim. See *Carlson v. Carlson's Estate*, 93 Idaho 258 (1969). Further, if the claim against an estate for services rendered clearly calls executors' attention to the fact of services, the period during which rendered, and amount demanded that is all that is sufficient for valid claim. See *Nagele v. Miller*, 72 Idaho 24 (1951).

> A claim against a decedent's estate need not be in any particular form; it is sufficient if it states the character and amount of the claim, enables the representative to provide for its payment, and serves to bar all other claims by reason of its particularity of designation[...] It is universally held that the statement of a claim against a decedent's estate need not conform to the technical rules of pleading, and the facts need not be set out with the particularity of a complaint.

See *Nagele* at 27.

> A claim against an estate need not state all the facts with the precision and detail required in a complaint, but it is sufficient to indicate the nature and amount of the demand in such a manner as to permit the executor and the probate judge to act advisedly upon it.

Id. at 27 (emphasis added) (internal citations omitted).

> This court has repeatedly stated that a claim against an estate need not be drafted with the precision of a complaint, but rather it is sufficient if it indicates the nature and amount of the demand in such a manner that the executors and probate court can act advisedly on it. The law is well settled that if there is any uncertainty in a claim filed against an estate, it is incumbent upon the executors to call for clarification. If the executor wishes to rely upon a formal defect in the claim, he should make his objection upon this ground known to the claimant in time to allow the claimant to file an amended claim prior to the expiration of the time allowed for filing. The failure of the executor seasonably to raise an objection to the form of the claim constitutes a waiver of the right to rely upon formal defects in rejecting the claim. This does not mean that when suit is brought on the rejected claim the claimant is relieved of the obligation of proving the validity of his claim. The respondents will have an opportunity at trial to dispute the existence of the debt and to call for a clarification of the nature of the claimant's demand.

Carlson v. Estate of Carlson, 93 Idaho 258, 260 (1969) (emphasis added) (internal citations omitted).

A pleading shall specify the relief sought but it may add as general prayer for such further or other relief as may be deemed just and equitable, even without the prayer for a specific remedy, proper relief may be granted by the court if the facts alleged in the complaint and the evidence introduced so warrant. See *Eugenio, Sr. v. Velez*, 185 SCRA 425, 432-433 (1990).

Equitable subrogation derives from the equitable power of the courts and it should be administered to ensure real and essential justice without regard to form. Because sufficient facts were alleged in the complaint to give rise to subrogation, and because those facts were established at trial, the district court did not err in finding liability on the theory of subrogation. *Hoopes v. Hoopes*, 124 Idaho 518, 522 (App. 1993).

If the plaintiffs' prayer for relief seeks not only a declaratory judgment but also

general equitable relief, the plaintiffs are entitled to invoke the long arm of equity to receive whatever relief the court may from the nature of the case deem proper. Any relief can be granted under the general prayer which is consistent with the case stated in the complaint and is supported by the proof provided the defendant will not be surprised or prejudiced thereby. *Pamela B. v. Ment*, 244 Conn. 296, 308, 309 (1998).

Here, this is a probate case and Samson stated the character and amount of the claim with sufficient particularity to enable the representative to provide for its payment, and to bar all other claims by reason of its particularity of designation. That is the personal representative knew how much to pay Samson, where to send the money, and that this would preclude any other claims for Samson's labor and expenses. See *Petitioner's Exhibit 9A*. Further, it is universally held that the statement of a claim against a decedent's estate need not conform to the technical rules of pleading. So there was no need for Samson to even plead law or equity or formulate a formal prayer for relief. It is true, Samson did not specifically plead for *quantum meruit* relief, but he did state in his *Answer to Counterclaim* that he believed his claim arose in equity. R 27. It is also true that at trial, Samson's attorney did not argue for *quantum meruit* relief but rather argued for relief under unjust enrichment. The *Hoopes, Eugenio,* and *Pamela B.* courts clearly show that a general prayer for equitable relief allows the court to fashion any other equitable relief that fits the evidence.[2] Miller does not argue that the evidence does not fit the relief granted here, but rather argues that Samson failed to argue for the specific relief granted. The law does not require Samson to do so. Miller cannot claim that she was prejudiced by Samson's attorney's failure to argue for *quantum meruit* relief, because the relief ordered was driven by the pleadings and the evidence in the case, all of which Miller was privy too. As the *Nagele* court stated, the failure of the executor to seasonably to raise an objection to the

2 Note that *Eugenio* and *Pamela B.* cases are persuasive, but not binding authority. *Hoopes* is binding authority.

form of the claim constitutes a waiver of the right to rely upon formal defects in rejecting the claim.

With respect to the Magistrate's finding that quantum meruit was an appropriate remedy -- the Magistrate did not abuse his discretion because he correctly perceived the issue as discretionary, acted within the bounds of discretion, applied the correct legal standards, reached the decision through an exercise of reason, and based his findings on substantial evidence.

IN THE ALTERNATIVE

Where the lower court reaches the correct result by an erroneous theory, the Idaho Supreme Court and the Court of Appeals will affirm the order on the correct theory. See *Nampa & Meridian Irr. Dist. v. Mussell*, 139 Idaho 28, 33 (2003). In this case, Samson argued for unjust enrichment. The Magistrate found that all the elements of an unjust enrichment claim had been proved but denied Samson's unjust enrichment claim solely on the basis that "the evidence does not establish the value of the benefit the estate received that would be unjust for the estate to retain without payment therefor to Mr. Samson." See R 72-74. As set forth above, Samson proved the reasonable value of his services and the reasonable value of his expenses enriched Miller dollar-for-dollar, and there was no evidence to contradict Samson's case that it would be unjust for Miller to retain any portion of said benefit, dollar-for-dollar.

IV. DID THE MAGISTRATE COURT ERR IN AWARDING REASONABLE VALUE OF SERVICES AND REASONABLE EXPENSES DAMAGES?

For a quantum meruit claim the measure of recovery is the reasonable value of the services rendered or of goods received, regardless of whether the defendant was enriched. See *Erickson v. Flynn*, 138 Idaho 430, 434-435 (App. 2002).

Miller contends that there was no evidence of the reasonable value of the services. This is not true. Samson billed Miller and therein stated that he thought $20 was fair for the services he provided. See *Petitioner's Exhibit 9A*. He also stated therein how many hours he worked and the type of work he completed. *Id.* "Fair" and "reasonable" are synonymous here, and the trial court is entitled to make reasonable inferences from the evidence. Further, Mr. Samson testified that his bill was a low estimate as to the work he did for the Estate and the expenses he incurred.

> Clark: So this bill was on the hours that you spent is an estimate?
>
> Samson. Yes.
>
> Clark: Is this a highest estimate or a low estimate?
>
> Samson: It's a low estimate.
>
> Clark: Is it your testimony today, then, that you whatever is in that bill you believe to have been correct and accurate at the time that you presented the bill or prepared the bill?
>
> Samson: Yeah.

TR 167 ll 25 through 168 ll 9.

Samson is not under any burden to present his evidence of his *reasonable value of his services evidence* by specifically invoking a phrase of art such as "$20 per hour was the reasonable value of the services I provided." That would be like saying that a murderer who confessed on the stand that he thought about it all day prior to beating his victim to death was not guilty of premeditated murder on the theory that no witness invoked the magic words of "malice aforethought."

Further, Samson presented the fuel expenses that showed up on Mr. Samson's father's credit cards. See *Petitioner's Exhibits 17 through 31.* The amount of the charges

were made by Mr. Samson and the fuel provider are arm's length transactions and are evidence of the reasonable value of the goods received. Samson testified that all the purchases were used on behalf of the Estate. TR 163 - 165. Under Miller's theory, because Samson did not invoke the magic words that fuel bills were "the reasonable value of the expenses incurred," that there was no evidence of the same. That is an absurd and meritless conclusion.

Moreover, Samson's statement in his bill that $20 per hour was a fair amount for his services was bolstered by many witnesses, who had provided similar services in the local area.

Dewey Bailey, who fed Mr. Manes horses, charged $25 an hour to feed horses. See TR 23 ll 6-15. This was the same person that Mr. Manes trusted to feed his horses the three months preceding his death.[3] TR 21 ll 14-18. These were the very same horses that Samson fed.

Ed Groseclose said it would take three workers two months to just sort the scrap out of the personalty. He testified that laborer's would receive a rate of $10 per hour and a supervisor would receive a rate of $15 per hour. TR 36 ll 7-21 and TR 38 ll 5-15. Assuming a person works a 40 hour week for 8 weeks that is $11,200 in labor ($400 a week for laborer 1 + $400 a week for laborer 2 + $600 a week for a supervisor). That is just to sort out the scrap and did not include hauling off garbage, etc. *Id.* Also keep in mind that Mr. Samson, being Almon and Virginia's long time and trusted friend was uniquely qualified to identify and set aside keepsakes where others would think it was junk as Steve Kalinoski had thought. See *Petitioner's Exhibit 3 and 6*, TR 128 ll 12-22, TR 27 ll 15.

Zane Cunningham testified that he was paid $4,000 for just cataloging an estate -- a

3 For his efforts the Millers called Mr. Bailey a worm and instead of paying him an amount they thought to be fair they paid him nothing. TR 22 ll 2-10.

task that took him weeks. TR ll 23. Mr. Samson worked months and he did far more than catalog. See *Petitioner's Exhibit 9A*. He supervised the winding down of an Estate that had an enormous amount of personalty. Three airplanes, perhaps 50 cars, all sorts of farm implements, batteries, and on and on. It was the Personal Representative that chose not to have an Estate sale. She was the one that chose to have Mr. Samson sort through all of this and to set aside the "good stuff" and put it into containers. See *Petitioner's Exhibit 11* & TR 90 ll 20 through 91 ll 2. That's precisely what Mr. Samson did and there is no evidence to the contrary.

William Howell testified that as a ranchhand and general laborer he made $8 per hour in Idaho county. TR 80 ll 13. Idaho county is situated in the state of Idaho and in this state minimum wage is $7.25 per hour.

However, again, the reasonable value of the goods and services Miller received was best proved by Samson himself. Given all of the different responsibilities Samson had he figured $20 an hour for his labor was fair (see *Petitioner's Exhibit 9A*) or in other words, the reasonable value of the services rendered. There was no testimony or evidence that directly challenges the $20 per hour figure. There was no testimony or evidence that challenged Samson's wear and tear on the tires. There was no testimony that the amount paid for fuel was unreasonable. Once more, the magistrate found Samson's testimony to be credible.

> Mr. Samson testified and presented evidence regarding the reasonable value of the services he provided to the estate. Ms. Miller did not testify or present any evidence. The court finds Mr. Samson's testimony and the evidence he presented on the issue credible, and there being no contradicting evidence presented by Ms. Miller, accepts Mr. Samson's testimony and evidence regarding the reasonable value of services he provided as fact.

R 76, footnote 3.

Miller wrote to Samson agreeing with him that the job was hard and it was a lot of responsibility. See *Petitioner's Exhibit 6, 12, & 13*. Milller had the opportunity to object to foundation and cross-examine Samson as to his bill and failed to undermine the bill or his testimony relating to it. Similarly, Miller had every opportunity to disprove Samson's calculation of what was a fair hourly rate with her own witnesses, but she did not contest -- with any evidence -- that rate was not a reasonable value of the services rendered. Thus, the rate of $20 per hour was the established and uncontroverted reasonable value of his services.

Samson worked at least 1193 hours in the service of the Estate. See *Petitioner's Exhibit 9A* & TR 167 ll 25 through 168 ll 9. At $20 per hour the value of his labor alone is $23,860. Samson purchased $1,586.02 in fuel on behalf of the estate, which is still indebted for, and for which he only asked for 80% of the value thereof or rather $1,268.82. See *Petitioner's Exhibit 9A*. Samson purchased tires for his pickup in the amount of $1181 which he attributed 65% of the wear to service to the Estate for a total of $767. *Id.* Samson even gave the Estate a $1500 offset for the value of the Honda ATV Four-Wheeler that he was given, which the Magistrate awarded Miller an optional credit for. *Id.* & R 81-82.

V. IS SAMSON ENTITLED TO ATTORNEY'S FEES AND COSTS ON APPEAL?

Pursuant to Idaho Code § 12-121 the Respondent requests attorney fees and costs for opposing the Personal Representative's appeal. Miller essentially continues a frivolous, baseless and meritless pursuit of getting the Magistrate's decision overturned. Miller has failed to make a serious effort in identifying applicable law and fairly represent the record causing Samson to once again take extra effort to unravel the multitude of Miller's baseless contentions.

Miller's first issue is that the trial court erred by finding the parties did not have an

express contract based upon performance. See *Appellant's Brief* at 3. Therein, Miller cites only that "Equity does not intervene when an express contract prescribes the right to compensation. *Vanderford Company, Inc. v. Knudson*, 144 Idaho 547, 558 (2007)." Said authority in no way sheds light on Miller's issue, and therefore the issue was brought without any basis, frivolously, and without merit.

Miller's second issue is that the trial court erred by finding that an implied-in-fact contract existed between the parties. See *Appellant's Brief* at 5. Miller cites that implied-in-fact contracts are "dependent on mutual agreement or consent,and on the intention of the parties; and a meeting of the minds is required. 17 C.J.S. § 6(b) at 422." Miller had notice of binding authority. R 8. Nevertheless, Miller inexplicably cites only persuasive authority in regard to what is required in the formation of an implied-in-fact contract. Further, Miller cites on page 6 of her brief, that "Quantum meruit is the appropriate recovery under a contract implied-in-fact. *Barry v. Pac. W. Const., Inc.*, 140 Idaho 827, 834 (2004)." Again, said authority in no way sheds light on Miller's issue, and no additional authority was cited for this issue. Therefore, the issue was brought without base, frivolously, and without merit.

Miller's third issue is that the trial court erred in granting quantum meruit relief when said theory was not argued by Samson. Miller cites no authority whatsoever in support of the issue she raises. Therefore, the issue was brought without any basis, frivolously, and without merit.

Miller's fourth and final issue is that the trial court erred in granting damages when no evidence was presented at trial regarding reasonable value of services. See *Appellant's Brief* at 3 & 8. As stated above, Miller's contention that there was no evidence of the reasonable value of the services is just plain false. Samson billed Miller and therein stated that he thought $20 was fair for the services he provided. See *Petitioner's Exhibit 9A*. He

also stated therein how many hours he worked and the type of work he completed. *Id.* "Fair" and "reasonable" are synonymous here, and the trial court is entitled to make reasonable inferences from the evidence. Further, Mr. Samson testified that his bill was a low estimate as to the work he did for the Estate and the expenses he incurred. TR 167 ll 25 through 168 ll 9. Additionally, as stated above, Samson produced many witnesses who testified the going rate for similar work from the local area.

In addition to the foregoing failures to cite relevant and binding legal authorities in support of the key issues in her appeal, Miller makes many baseless, frivolous, and meritless statements regarding the evidence adduced at trial that are misleading:

ONE

> Samson provided services for the Estate on his own free will. See TR 188 ll 22-23.

Appellant's Brief at 2. This statement is Miller's intentional act to mislead or confuse the Court into believing that Samson did not expect compensation in return for the services he rendered, which is patently false. Samson testified as follows:

> Clark: Mr. Mitchell spent some time trying to get or trying to get at whether you were forced or you volunteered or voluntarily went out to the Almon Manes' Estate. So my question is: Did you ever come to the decision that you were going to work on the Almon Manes' Estate without compensation? Was it your intent that you would go out there and not get compensated?
>
> Samson: No. My intent was to be well compensated.
>
> Clark: Okay. And you went out there willingly expecting to be compensated?
>
> Samson: Yeah.

TR 189 ll 6-16.

TWO

> At trial, Samson went through and testified about all of the obligation in the Agreement that he performed. Samson argued that performance could establish, or bind a party, without a signature... Miller respectfully contends that the evidence at trial supports a finding that the Agreement and its terms is binding based on performance as argued by Samson... Samson performed under the Agreement and argued for its enforceability. The only enforceable contract, whether it be express or implied, is the Agreement based on performance as argued by Samson.

Appellant's Brief at 3, 5 & 10 (emphasis added to the factual mistatements). These statement are Miller's intentional act to mislead or confuse the Court into believing Samson waived or is estopped from pursuing alternate theories of recovery because his attorney made an argument in favor of using Miller's May of 2009 written proposal to examine Samson. See TR 149 ll 19 through 150 ll 1-20. Samson's attorney was entitled to speculate upon, pursue, and abandon alternate theories of recovery as he deemed to be in his client's interest. Samson has long since suspended pursuing the alternate theory that he might be entitled to all of the property listed in Miller's May of 2009 written proposal. Miller is aware of this but nonetheless makes such baseless, meritless, and frivolous statements.

THREE

> The evidence in the record is in not in [sic] dispute that Miller told Samson that he would not be compensated with money... While Samson testified that he told Miller he wanted money, Miller did not agree and told Samson that he would be well compensated... This is a matter where Miller consistenlty stated that monetary compensation would not be paid.

Appellant's Brief at 4, 6 (emphasis added). While it is not in dispute that Miller attempted to get Samson to agree to no monetary compensation on a couple of instances, Miller omits that Miller told Samson that he was going to be put on the payroll and issued checks for his

labor. TR 176 ll 15 through 177 ll 1 & *Petitioner's Exhibits* 6 & 12.

FOUR

> Samson never testified to the Court that he was requesting $20 [per hour]... Exhibit 9A was a letter Samson allegedly sent regular and certified mail to Miller. There was never any testimony as to its contents...

Appellant's Brief at 9. Samson presented to Miller a bill for the fair value of his services which he calculated to be $20 per hour. See *Petitioner's Exhibit 9A*. Not only did Samson actually send the bill, he testified at length about the contents therein, and further, regarding the bill Samson testified that he estimated on the low side to the benefit of the estate. TR 157 ll 5 through 168 ll 9. The Magistrate was within his discretion infer therefrom that Samson's bill and the statements regarding the fairness of his bill represented the reasonable value of his services. Miller's misstatements and omission on such key facts reveal the meritless, baseless, and frivolous nature of her appeal.

CONCLUSION

The District Court's *Order on Appeal* affirming the Magistrate's *Order Granting Petition For Allowance of Claim* should be affirmed, either "as is" or under the alternate theory of unjust enrichment, and the Respondent's request for attorney fees and costs should be granted.

DATED this 30th day of August, 2012.

Thomas J. Clark
Attorney for Respondent

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of August, 2012, I served two true and correct copies of the foregoing RESPONDENT'S BRIEF by delivering the same to the persons below by the method indicated below:

John C. Mitchell
CLARK & FEENEY
PO Box 285
Lewiston, ID 83501

[ ] U.S. Mail, postage prepaid
[ ] E-mail
[ ] Hand Delivered
[X] Messenger Service
[ ] Telephonic Facsimile

Thomas J. Clark